



*A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                     |            |
|---------------------|------------|
| Order reserved on   | 28.04.2022 |
| Order pronounced on | 29.06.2022 |

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

**Application No.4393 of 2021**  
**in**  
**Civil Suit (Comm. Div) No.642 of 2019**

M/s.SPN Hotels Private Limited,  
Rep. by its Managing Director,  
Mr.SP.N.Krishnamoorthy,  
Having its registered office at  
No.152, Greenways Road,  
Chennai-600 028.

... Applicant/  
2nd Defendant

vs.

1. M/s.Sree Gokulam Hotels (India) Pvt. Ltd.,  
Rep. by its Director,  
Mr.V.C.Praveen,  
Having its registered office at  
No.49, Arcot Road,  
Kodambakkam, Chennai-600 024 ... 1st Respondent/Plaintiff
2. M/s.Sabari Inn Ltd.,  
Rep. by its Director,  
Mr.M.Manikandan, S/o.Murugesan,  
No.29, Thirumalai Pillai Road,  
T.Nagar, Chennai-600 017,



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

Now at Old No.28, New No.30,  
6<sup>th</sup> Main Road, Raja Annamalaipuram,  
Chennai-600 028,

Now represented by its Director  
Mr.Venkatraman Kannan

...2nd Respondent/1<sup>st</sup>  
Defendant

This Application is filed under Order XIV Rule – 14(8) of Original Side Rules read with Order 13-A of CPC read with Clause 12 of Letters Patent praying to dispense with the procedure of trial and pass a Summary Judgment in favour of the applicant/second defendant by dismissing the relief of directing the first defendant to execute and register the sale deed joining the second defendant as second vendor conveying the Schedule "A" and "B" properties free of all encumbrances in favour of the plaintiff as per the terms of the agreement for sale dated 29.12.2014 entered into between the plaintiff and the first defendant to convey clear and marketable title to the plaintiff and consequently direct the first defendant to hand over vacant possession of the suit schedule "A" and "B" properties to the 2<sup>nd</sup> defendant to be fixed by this Court, failing which appoint an officer of Court to perform the same.

For Applicant : M/s.R.Balachanderan  
Mr.V.Jayaprakash

For Respondents : Mr.T.V.Ramanujun  
Senior Counsel  
for M/s.R.Ramya for R-1

Ms.A.Subadra for R-2



## **ORDER**

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In a suit by the first respondent/plaintiff for specific performance of a contract relating to immovable and movable property with an alternative prayer for refund of money paid as consideration with interest, the second defendant, which is the subsequent purchaser of the relevant property, has presented this application for summary judgment insofar as it relates to the relief of specific performance.

2. The applicant/second defendant stated that the first defendant had borrowed money from the State Bank of Bikaner and Jaipur (the Bank) by creating a mortgage over three properties that the first defendant owned then. These properties are located at Old Mahabalipuram Road (the OMR Property), Coimbatore (the Coimbatore Property) and T.Nagar, Chennai (the T.Nagar Property), respectively. According to the applicant, Mr.A.M.Gopalan, the Managing Director of the plaintiff and K.R.V.Ramani, the former Managing Director of the first defendant, were close friends. Since the Bank called upon the



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

borrower to discharge the loans, the applicant stated that the plaintiff entered into agreements of sale in respect of the above mentioned three properties. As regards the OMR Property, an agreement of sale dated 24.05.2012 was entered into by which the plaintiff agreed to purchase the property at the sale consideration of Rs.55 crore. From and out of the sale consideration, it was agreed that a sum of Rs.35 crore would be paid directly to the Bank. A separate sale agreement dated 28.01.2014 was entered into between the plaintiff and the first defendant in respect of the Coimbatore Property with a sale consideration of Rs.58.50 crore. From and out of this sum, a sum of Rs.20 crore was agreed to be paid directly to the Bank. A third sale agreement dated 29.12.2014 (the Sale Agreement) was entered into in respect of the T.Nagar Property, including the movables therein (the suit schedule property). The sale consideration in respect thereof was fixed at Rs.81 crore. From and out of this sum, a sum of Rs.39 crore was to be paid directly to the Bank.



3. As regards the OMR Property, the plaintiff paid the full sale consideration and a sale deed dated 05.01.2015 was executed in its favour. Likewise, as regards the Coimbatore Property, the plaintiff paid the full sale consideration and a sale deed dated 23.09.2015 was executed in its favour. However, as regards the suit schedule property, according to the applicant, the plaintiff paid part consideration in 2014 and 2015 and, thereafter, decided to resile from the Sale Agreement. A little later, the applicant/second defendant was approached in relation to the purchase of this property. Pursuant thereto, the applicant/second defendant purchased the property for a total sale consideration of Rs.50,00,11,000/- under sale deed dated 31.03.2017. Subsequently, on 22.08.2017, Mr.K.R.V.Ramani resigned as Managing Director of the first defendant company.

4. According to the applicant, after abandoning the Sale Agreement, the plaintiff changed its mind about four years later and decided to resurrect its claim for specific performance. With a view to make it appear like the plaintiff continued to exhibit readiness and willingness to perform its obligations under the



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

Sale Agreement, as purported evidence of further payments towards sale consideration, the applicant alleged that the plaintiff created a fraudulent receipt dated 28.03.2019 for a sum of Rs.7 crore by taking advantage of the close friendship between Mr.K.R.V.Ramani and Mr.A.M.Gopalan.

5. The applicant asserted that the plaintiff had opened accounts in the Bank earlier in which a sum of about Rs.30 crore was retained when the plaintiff intended to proceed with the purchase of the suit schedule property. However, once the plaintiff decided not to proceed with the purchase of the said property, the accounts were closed and the amount remitted therein was transferred or withdrawn by the plaintiff. The applicant contended that this establishes beyond doubt that the plaintiff was not ready and willing to fulfil its obligations under the Sale Agreement. According to the applicant, after resiling from the Sale Agreement, the present suit has been filed in the year 2019. Consequently, it is contended that the suit is barred by limitation at least as regards the relief of specific performance, and that the plaintiff has no real prospect of succeeding on the



suit claim. The applicant also pointed out that the sale deed was executed by the first defendant in its favour on 31.03.2017 after it discharged the dues of the Bank. The applicant asserted that the plaintiff had full knowledge of the execution of the sale deed in its favour. In the above facts and circumstances, the applicant contended that the Sale Agreement was abandoned by the plaintiff by relying on Section 67 of the Indian Contract Act, 1872 and the judgment of the Calcutta High Court in *Mathuramohan Saha v. Ram Kumar Saha*, AIR 1916 Calcutta 136.

6. In response, the plaintiff pointed out that the performance of payment obligations by the plaintiff under the Sale Agreement was contingent on the first defendant obtaining the concurrence of the Bank for a one time settlement for a sum not greater than Rs.39 crore. Since the antecedent obligation was not fulfilled by the first defendant /vendor, the plaintiff contended that its subsequent obligation was not triggered. The plaintiff also contended that time is not of the essence of the contract, and that the closure of the bank accounts and the withdrawal of a



sum of Rs.30 crore therefrom are not fatal to the suit for specific performance.

7. In response to the contention that the suit is barred by limitation, the plaintiff contended that there was no notice from the first defendant with regard to the acceptance by the Bank of a one time settlement for Rs.39 crore or less. Therefore, the subsequent reciprocal obligation to make further payments was not triggered. On the performance of reciprocal obligations, the plaintiff relied on the judgment of the Hon'ble Supreme Court, which is reported in *R.Lakshmikantham v. Devaraji*, (2019) 8 SCC 62 and, in particular, paragraph 10 thereof. The plaintiff submitted that the limitation period of three years runs from the date on which the counter party refuses to perform its obligations under the Sale Agreement. When the plaintiff approached the first defendant after the shocking discovery that the suit schedule property had been transferred to the applicant/second defendant, the plaintiff submitted that the first defendant assured it that the sale deed would be executed in its favour and that the second defendant is a nominee. Only after sending lawyer's notices to



the first defendant, which were returned unserved, the plaintiff stated that it became clear that the first defendant would not fulfil its obligation under the Sale Agreement by conveying the property to the plaintiff. Therefore, it was submitted that the suit is not barred by limitation and that limitation is, in any case, a mixed question of fact and law which cannot be determined at this juncture.

8. The plaintiff also submitted that it cannot be concluded, at this juncture, that the plaintiff has no real prospect of succeeding in the suit for specific performance. The plaintiff pointed out that it had paid a sum of about Rs.20 crore towards part sale consideration for the purchase of the property. The Plaintiff also pointed out that notices to produce documents were issued both to the first defendant and the applicant/second defendant, and that those documents would have a bearing on the suit. At a minimum, the plaintiff contended that a trial would be required to adjudicate the dispute in view of the multiple disputed questions of fact that arise for consideration.



9. The first defendant filed a written statement in the suit. In the written statement, the first defendant stated that the plaintiff discharged the liability of the first defendant towards the Bank as regards the OMR and Coimbatore Properties and conceded that the said Properties were transferred in the plaintiff's name. With regard to the suit schedule property, the first defendant asserted that the plaintiff withdrew from the Sale Agreement and that the suit schedule property was transferred to the second defendant after the second defendant discharged the liability to the Bank and paid the full sale consideration.

10. In view of the rival contentions, the primary question to be examined is whether the applicant/second defendant is entitled to a summary judgment insofar as it relates to the relief of specific performance. The suit is for specific performance of the Sale Agreement by directing the defendants to execute and register a sale deed in favour of the plaintiff. The alternative prayer is for refund of the sale consideration of Rs.19,89,23,147/- along with interest thereon at 24% p.a.



11. The grounds for grant of summary judgment are prescribed in Rule 3 of Order XIII-A of CPC. Rule 3 is as under:

*"3. Grounds for summary judgment:*

*The Court may give a Summary Judgment against a plaintiff or defendant on a claim if it considers that-*

*(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and*

*(b) There is no other compelling reason why the claim should not be disposed of before recording of oral evidence."*

12. From the above, it is evident that two requirements are imposed by Rule 3. The primary requirement is to examine whether the applicant has established that the counter party has



no real prospect of succeeding in the suit. If the primary question is answered in the affirmative, the secondary question for consideration would be whether there is any other compelling reason to record oral evidence in order to decide the issue raised in the application for summary judgment. Rule 4 sets out the procedure in relation to an application for summary judgment. In particular, sub-rule (3) deals with the reply to an application for summary judgment, clause (b) thereof requires the counter party to include the documentary evidence relied upon and clause (e) thereof requires the counter party to indicate what further evidence would be brought at trial. Rule 5 stipulates the evidence to be adduced by parties in relation thereto and sub-rule (1) thereof enables the counter party to produce additional evidence. Rule 6 illustratively sets out the range of orders that may be passed in an application for summary judgment either in relation to the whole or part of the claim in the suit. Rule 7 enables the Court to pass a conditional order if it appears to the Court that it is possible but improbable that a claim or defence may succeed. Order XIII-A is inspired by the Civil Procedure Rules (CPR) of the United Kingdom. In particular, paragraph 24 of the CPR deals



with summary judgment. Paragraph 24.2 thereof is akin to Rule 3 of Order XIII-A and reads as under:

*24.2 The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –*

*(a) it considers that –*

*(i) the claimant has no real prospect of succeeding on the claim or issue; or*

*(ii) the defendant has no real prospect of successfully defending the claim or issue; and*

*(b) there is no other compelling reason why the case or issue should be disposed of at a trial.*

13. Against this statutory context, the interpretation of substantially similar provisions of the CPR by courts in the UK and the interpretation of Order XIII-A CPC by Indian courts may be examined. In *Terence Paul Swain v. T Hillman (Male) and T C Gay* [2001]2 All ER 91, the Court of Appeal (Civil Division) held that the words "no real prospect of succeeding" speak for themselves and that the word "real" is used in contradistinction



to fanciful or unrealistic prospects of success. In *ED & F Man Liquid Products Ltd. v. Patel & another*, (2003) EWCA Civ 472, the Court of Appeal (Civil Division) examined the scope of summary judgment under the CPR. The Court held that a realistic claim is one that carries some degree of conviction and is more than merely arguable. At paragraph 9 of the judgment, the Court concluded that the overall burden of proof rests upon the claimant. It was also held that the court should not conduct a mini-trial while deciding an application for summary judgment. In *Easyair Limited (Trading as Open Air) v. Opal Telecom Limited* [2009] EWHC 339 (Ch), Mr. Justice Lewison of the Chancery Division of the High Court of England and Wales formulated seven principles. Apart from the principles discussed above, the Court concluded that if the evidence on record indicates that further material evidence can reasonably be expected at trial, a summary judgment should not be issued, but that "it is not enough simply to argue that the case should go to trial because something may turn up which would have a bearing on the question of construction."

14. In the Indian context, the Delhi High Court dealt



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

with the scope of Order XIII-A CPC in *Kamdhenu Limited v. Aashiana Rolling Mills Limited (2021) SCC Online Del. 2426*. After referring to the judgment in *Su-Kam Power Systems Limited v. Kunwer Sachdev and Others (2019) SCC Online Del. 10764 (Su-Kam)* and the judgment of the Chancery Division in *PCR Limited v. Opal Telecoms Limited (2009) EWCA Civ. 339*, the Delhi High Court concluded that the court is required to consider whether the defences raised by the defendants are moonshine and sham. In particular, the Delhi High Court relied upon the observation in *Su-Kam* that if it were possible for the court concerned to find the necessary facts to resolve the dispute in a fair and just manner in course of hearing an application for summary judgment, proceeding to trial would generally not be proportionate, timely or cost effective. After taking into account the rules under Order XIII-A and the above judgments, I had formulated non-exhaustive principles relating to the grant of summary judgment in *Godaddy.com LLC. v. Puravankara Projects Limited, A.No.4983 of 2021, Judgment dated 07.06.2022*. The said principles are set out below:



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*"(i) The applicant should discharge the burden of establishing that the counter party has no real prospect of succeeding on the claim, including a part thereof, or successfully defending the claim, or a part thereof, as the case may be. The adjective 'real' is used to indicate that such prospect is not 'illusory', 'theoretical or statistical' or 'imaginary' or 'fanciful'.*

*(ii) Rule 6 of Order XIII-A confers wide latitude on the court to pass a range of orders in an application for summary judgment either on the whole or part of the claim. The types of order specified in Rule 6 are illustrative and not exhaustive.*

*(iii) If the Court concludes that the counter party could probably succeed, as regards the whole of the claim, the application is liable to be dismissed. If the court considers the success of the counter party probable as regards a part of the claim, or, in respect of some of the reliefs claimed, but not the remainder,*



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A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

*the application may be considered as regards the remainder.*

*(iv) If the court concludes that it is really possible but not probable that the counter party could succeed, a conditional order may be passed. Although Rule 7 of Order XIII-A uses the word 'possible', it does not mean statistical or theoretical possibility but real possibility.*

*(v) Once the applicant satisfies the requirement of clause (a) of Rule 3 of Order XIII-A, it becomes necessary for the court to consider whether there is any other compelling reason to direct parties to record oral evidence. Since the conjunction 'and' is used between clauses 'a' and 'b' of Rule 3, the requirements should be construed as cumulative.*

*(vi) The obligations imposed by Rules 4 and 5 on the parties to plead their respective cases and produce all material evidence in relation thereto does not shift the burden of proof. Instead, it is a*



*procedural device to enable the court to meaningfully consider whether the whole or part of the suit claim may be disposed of summarily.*

*(vii) The scope of Order XIII-A is wider than Order XII, Rule 6 CPC, which is triggered only on the basis of admissions. It is also far wider than Order VII Rule 11 CPC because the court goes well beyond the plaint and examines all the evidence placed before it. However, such application is maintainable in the limited window after summons' are served but before issues are framed.*

*(viii) In the ultimate analysis, Order XIII-A facilitates fulfilment of two salient but often undervalued objectives of a fair and just dispute resolution system, namely, expeditious disposal and equitable and proportionate allocation of the limited resources of the public court system. It represents a paradigm shift from a blinkered trial-is-the-only-method approach to the adjudication of civil suits to a*



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*more balanced approach, which preserves the trial process wherever appropriate and necessary.”*

15. Thus, this application should be tested against the above standards. As discussed above, the expression “real prospect” has been interpreted in several judgments of the English and Indian courts as meaning not unrealistic, imaginary or fanciful. With reference to the facts of this case, while undertaking this exercise, it should be borne in mind that the applicant/second defendant seeks a summary judgment only insofar as the relief of execution and registration of a sale deed in favour of the plaintiff is concerned. The admitted position is that the first defendant entered into the Sale Agreement with the plaintiff on 29.12.2014. The sale consideration is specified in the Sale Agreement as Rs.81 crore. A sum of Rs.10 crore was paid as advance by the plaintiff and the receipt thereof was acknowledged in the agreement. Clause-4 of the Sale Agreement is relevant since it relates to the payment of the balance sale consideration. Clause-4 is set out below:



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A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

"4. The PURCHASER hereby agrees and undertakes to pay the balance consideration of Rs.71,00,00,000/- (Rupees Seventy One Crore only) to the vendor in respect of the property (both immovables and movables) more fully described in the schedule hereunder on or before 30<sup>th</sup> April 2015 from the date of this agreement and to complete the transaction in all respects, subject to discharge of the liability to the bank and release of the original documents."

16. From paragraphs 6 to 8 of the plaint, it is evident that the plaintiff also entered into agreements of sale in relation to the OMR Property and Coimbatore Property, and paid the full sale consideration in respect thereof. From paragraph 11 of the plaint, it is also clear that sale deeds in respect of the OMR Property and Coimbatore Property were registered in favour of the plaintiff on 05.01.2015 and 23.09.2015, respectively. After



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

the date of execution of the Sale Agreement, the plaintiff asserted that three further installments of Rs.3 crore, Rs.4 crore and 3 crore were paid by RTGS to the first defendant on 04.02.2015, 25.02.2015 and 23.04.2015, respectively. The plaintiff had originally claimed that a sum of Rs.7 crore was paid by RTGS to the first defendant on 28.03.2019. Subsequently, the plaintiff admitted that the said sum was paid to Mr.K.R.V.Ramani and not to the first defendant and the plaint was amended at the plaintiff's request by deleting the reference to the sum of Rs.7 crore. Thus, the plaintiff's case is that it paid a sum of Rs.20 crore towards part consideration under the Sale Agreement. From the dates indicated by the plaintiff, the first installment was paid in the year 2014 and the subsequent three installments in the first half of the year 2015. Although the first defendant denied receiving these payments towards the suit schedule property, this aspect should await trial since the payments were made through bank channels. For purposes of this application, the material issue is whether the plaintiff has a realistic prospect of succeeding in its request for specific performance in spite of not making any payments after 23.04.2015.



17. By way of explanation and justification for not making payments after 23.04.2015, the plaintiff stated that it was ready and willing to clear the dues of the first defendant to the Bank to the maximum extent of Rs.39 crore. Towards such end, the plaintiff took a term loan of Rs.30 crore from the Federal Bank Limited on 31.03.2015 and deposited the said amount in an account maintained by the plaintiff with the Bank. The principal contention of the plaintiff is that it did not proceed to pay the balance sale consideration because the first defendant did not issue notice to it with regard to the concurrence of the Bank for a one time settlement for a sum not exceeding Rs.39 crore. The plaintiff further asserted that it was shocked to discover that the first defendant had executed and registered a sale deed dated 31.03.2017 in favour of the second defendant. Upon questioning the first defendant about the same, the plaintiff stated that the first defendant informed the plaintiff that the registration of the property in the name of the second defendant was nominal and would not affect the execution of the sale deed in favour of the plaintiff. The plaintiff also stated that it became aware through the former Managing Director of the first defendant that the loans



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

availed of by the first defendant from the Bank had been discharged on 31.03.2017.

18. Thus, the case of the plaintiff turns heavily on its assertion that its obligation to make payments under the Sale Agreement are contingent on the first defendant obtaining the concurrence of the Bank for a one time settlement equal to or less than Rs.39 crore. In order to test the tenability of this contention, the relevant clause in the Sale Agreement should be examined. The relevant clause – 5 is set out below:

*"5. The VENDOR declares that the property (both immovables and movables) is mortgaged with the State Bank of Bikaner and Jaipur Ltd for the loan and credit facilities availed by the VENDOR on the schedule mentioned property (both immovables and movables) and the present outstanding to the bank is about Rs.39,00,00,000/- (Rupees Thirty Nine*



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A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

*Crores only). The VENDOR hereby agrees to get the release of original documents of title pertaining to the schedule mentioned property (both immovables and movables) on payment of the above mentioned amount or such other amount which the bank may accept as a one time settlement. The VENDOR undertakes to get the final settlement amount from the bank at a sum not exceeding Rs.39,00,00,000/- (Rupees Thirty Nine Crores only) which shall be paid by the PURCHASER directly to the loan account of the VENDOR herein. The VENDOR hereby undertakes that they shall obtain time for the one time settlement amount of the loans of the VENDOR up to 31<sup>st</sup> March 2015 and all interest and other charges of the bank up to the date of settlement shall be to the account of the VENDOR herein. It is further agreed*



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A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

*between the parties that the amount to be remitted by the PURCHASER for the settlement of loan of the State Bank of Bikaner and Jaipur Ltd shall be in part payment of the purchase consideration of this agreement of sale. On such payment to the loan account of the VENDOR by the PURCHASER, the PURCHASER shall collect all the original documents of title of the schedule mentioned property (both immovables and movables) and hold them in their possession as a charge against the property till the final execution of the sale deed of the property. In the event of any increase over and above the said figure of Rs.39,00,00,000/- (Rupees Thirty Nine Crore only) for the full and final settlement of the bank loan, such increased amount shall be settled by the VENDOR out of their other resources and the PURCHASER shall*



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A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

*not be responsible to the same. The balance consideration after adjusting the advance paid and the payments made to the Bank, will be paid to the VENDOR herein.*

19. On close scrutiny, Clause 5 provides for the following:

(i) The Vendor declared that the outstanding to the Bank is about Rs.39 crore (Rupees Thirty Nine Crores only).

(ii) The Vendor undertook to obtain from the Bank a final settlement for a sum not exceeding Rs.39 crore.

(iii) The Vendor agreed to obtain release of the original documents of title for the schedule mentioned property on payment of Rs.39 crore or such other amount which the Bank may accept as a one time settlement.



(iv) The Vendor undertook to obtain time for the one time settlement of loans of the Vendor up to 31<sup>st</sup> March 2015.

(v) The Purchaser agreed to remit a sum not exceeding Rs.39 crore to the Bank from and out of the sale consideration payable to the Vendor.

(vi) Upon payment of a sum not exceeding Rs.39 crore to the Bank, the Purchaser was entitled to retain the original documents of title as a charge on the property until final execution of the sale deed of the property in favour of the Purchaser.

(vii) In case the Bank agreed to a settlement for a sum in excess of Rs.39 crore, the amounts in excess of Rs.39 crore would be paid to the Bank by the Vendor from and out of its own resources and the Purchaser would not be responsible for the same.

(viii) After adjusting the advance paid previously by the Vendor and the amounts paid to the Bank, the balance consideration would be paid by the Purchaser to the Vendor.



20. The plaintiff relied on the undertaking in Clause 5 that the first defendant would obtain concurrence from the Bank for a settlement for not more than Rs.39 crore, but Clause 5 also provides that the plaintiff's obligation thereunder was to pay a sum not exceeding Rs.39 crore to the Bank and that, if the Bank was not willing to accept a sum equal to or less than Rs.39 crore, the first defendant/Vendor was required to pay the excess to the Bank. Therefore, it was not necessary for the plaintiff to wait endlessly for the concurrence of the Bank for a settlement equal to or less than Rs.39 crore. Moreover, there are no communications from the plaintiff to the first defendant during the relevant period with regard to the alleged failure of the first defendant to obtain such concurrence.

21. It is pertinent to bear in mind that the total sale consideration under the Sale Agreement is a sum of Rs.81 crore. Towards such consideration, the plaintiff stated that it paid Rs.20 crore, in the aggregate, as of early 2015. As evidence of such payments, the plaintiff produced the statements of account in relation to accounts maintained by it at the CSB Bank Limited.



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

These statements disclose payments to Sabari Inn Limited or State Bank of Bikaner and Jaipur between 26.05.2012 and 25.02.2015. In addition, a pay order for Rs.3,00,00,000/-, which was issued on 23.04.2015, is reflected but the beneficiary thereof cannot be gleaned therefrom. Thereafter, until date, admittedly, no further payments were made to the first defendant.

22. Under Section 16(c) of the Specific Relief Act, 1963, the plaintiff should establish readiness and willingness from the date of execution of the contract until the date of suit. Therefore, in the circumstances set out above, in respect of the period subsequent to 23.04.2015, the documents produced by the parties in relation to readiness and willingness to fulfil obligations under the Sale Agreement should be examined. The plaintiff produced a statement of account for the period 28.03.2015 to 09.03.2016 in respect of an account with Federal Bank(plaint document no.9). The said statement shows that a term loan of Rs.30 crore was availed of by the plaintiff on 31.03.2015. The plaintiff also produced the statement of account for Account No.61265956561 with the State Bank of Bikaner and Jaipur for



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

the period 15.05.2015 to 12.04.2016(plaint document no.13).

This statement shows that Rs.30 crore was credited into the account on 31.03.2015, converted into a fixed deposit on 30.04.2015 and withdrawn with interest accruals (Rs.30,14,99,814) by closing the account on 30.05.2015. Although the plaintiff contended that further payments were not made because the first defendant did not obtain concurrence for a one time settlement from the Bank, as stated earlier, the plaintiff has not asserted or produced evidence that it called upon the first defendant to do so. The plaintiff has also not produced any communication indicating that it offered to pay a sum of Rs.39 crore to the Bank as part payment of the sale consideration to the first defendant. Indeed, in the period subsequent to the first half of 2015, the only payment and financial capability-related documents produced by the plaintiff relate to current accounts maintained by the plaintiff in CSB Bank Limited, Federal Bank, Axis Bank and the Bank. As discussed above, these statements disclose that no payments were made to the first defendant after early 2015 and that the sum of Rs.30 crore, which was deposited in the account of the plaintiff in the Bank in



March 2015, was withdrawn in May 2015. Thus, the evidence on record discloses that the plaintiff did not perform any actions to show readiness and willingness to perform the Sale Agreement after 30.05.2015.

23. In addition, in paragraph 16 of the plaint, the plaintiff admitted that it discovered that the first defendant executed a registered sale deed in favour of the applicant/second defendant. The plaintiff also admitted in paragraph 18 thereof that it came to know from Mr.K.R.V.Ramani that the loan availed of by the first defendant from the Bank was discharged on 31.03.2017. While admitting knowledge of the above facts, the dates of knowledge are not mentioned either in the plaint or reply statement. The plaintiff stated, however, in the reply statement that the applicant was aware of the Sale Agreement and is not a *bona fide* purchaser. The plaintiff also relied on the notices issued by it to produce documents. But on perusal thereof, the documents called for by the plaintiff do not relate to the plaintiff's readiness and willingness to perform its obligations under the Sale Agreement and, therefore, are not material for the purposes



of establishing that the plaintiff has a real prospect of success.

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24. Meanwhile, after purchasing the property on 31.03.2017, the documents on record disclose the following: the applicant/second defendant created a charge on the property as security for a loan availed by it from the City Union Bank; the Town Survey Land Register and other records were mutated in the applicant's name; and the applicant has obtained various tax and other registrations at this address. When the above facts and evidence are considered in totality, the only reasonable conclusion is that the plaintiff does not have a realistic prospect of success as regards the relief of specific performance.

25. The next question to be considered is whether there is any other compelling reason to record oral evidence before taking a decision on the matter. In *Syrma Technology Private Limited, Chennai v. Powerwave Technologies Sweden AB(in Bankruptcy)*, (2020) 8 MLJ 332 (*Syrma Technology*) a Division Bench of this Court concluded that the burden of proof with regard to the first limb under Rule 3 of Order XIII-A is imposed on the applicant,



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

whereas the burden of proof as regards the second limb is imposed on the respondent in such application. While the plaintiff pleaded, in the plaint, that the first defendant assured it orally through Mr.K.R.V.Ramani that the sale deed would be executed in its favour and that the registration of the sale deed in favour of the applicant is nominal, no particulars are set out either in the plaint or in the counter as to when or where such assurances were made. Besides, the first defendant categorically denied these assertions in its written statement, and also pointed out that Mr.K.R.V.Ramani resigned as Managing Director of the first defendant on 22.08.2017 and was neither authorised to nor extended the time for performance. Given the fact that the documents disclose that the plaintiff withdrew the sum of Rs.30 crore from its account in May 2015 and made no further payments to the first defendant, there is no compelling reason to record oral evidence with regard to the relief of specific performance merely on the basis of assertions, which are denied by the first defendant, bereft of particulars and not corroborated in any manner. Consequently, the applicant is entitled to succeed.



A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

26. In the result, the application is allowed by pronouncing a summary judgment rejecting the suit claim insofar as it relates to prayer (i) for execution of a sale deed by the defendants in favour of the plaintiff and prayer (iii) of paragraph 37 of the plaint. The plaintiff is at liberty to prosecute the suit with regard to the reliefs claimed against the first defendant.

**29.06.2022**

Index : Yes  
Internet : Yes  
kal/rrg



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A.No.4393 of 2021 and C.S.(Comm. Div) No.642 of 2019

**SENTHILKUMAR RAMAMOORTHY, J**

kal/rrg

**Pre-Delivery Order in**  
**Application No.4393 of 2021**  
**in**  
**Civil Suit (Comm. Div) No.642 of 2019**

**29.06.2022**